IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 2735 OF 2001 (MS)

(OLD NO. 198 OF 1989)

Pt. Chandi Prasad Panchbhaiya, S/O Sri Fauri Ram Panchbahiya, R/O Mohalla Maliyan Near Ram Lila Ground And Pargana Jwalapur, District Haridwar. .....Petitioner.

Versus

1. VIIIth Addl. Civil Judge, Saharanpur.
2. Judge Small Causes Court/Munsif Haridwar.
3. Pt. Ram Kumar Goswami, S/O Pt Bhoop Chand, R/O Havelli Panchbhaya, Bada Bazaar, District Haridwar.

.....Respondents.

Dated 05.05.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Nagesh Agarwal, Advocate for the petitioner and learned standing counsel for the respondents no.1 and 2.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 3rd October, 1988 passed by the Judge Small Causes Court, Haridwar.

Briefly stated, the petitioner has filed a J.S.C.C. Suit No. 29 of 1983 in the Court of Judge Small Causes Court, Haridwar for the ejectment of the respondent no.3 as well as for recovery of the arrears of rent.

During the pendency of the suit, the petitioner has filed an application U/o 15 Rules 5 C.P.C. for striking off the defence of the defendants. The trial Court has allowed the application, but on a revision preferred by the respondent no. 3, the same was allowed.

Admittedly, the suit was filed in the year, 1983 and the application was disposed of in the year, 1987. petitioner has submitted that much time has passed and as such the

compliance of Order 15 Rule 5 C.P.C. at this stage has to be taken into account afresh.

In view of the above, if the petitioner files a fresh application on the subsequent events i.e. during the pendency of the suit; from 1983 up to this date, the respondent no.3 shall decide the same within a period of four months from the date of production of the certified copy of the order along with the suit itself.

Subject to aforesaid observation, writ petition succeeds and is allowed. No order as to costs.

(Rajesh Tandon, J.)

05.05.2006

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